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COUNTER-QUESTION PRESENTED.

Where it is admitted that the only evidence to support a claim of "organizational" picketing are picket-placards proclaiming a "Strike" and exhorting the public to boycott the employer, may not a state court, in exercise of its police powers, enjoin the picketing where it finds on a convincing Record of abuse and misconduct that the true purpose of the picketing is the coercion of employees in the exercise of their rights and to coerce the employer to compel its employees to involuntarily join the picketing unions where such union-conduct is prohibited by state law which also renders the State Anti-Injunction Act inapplicable to such violations of the law?

STATUTES INVOLVED.

The Pennsylvania Labor Relations Act of June 1, 1937, P. L. 1168, as amended by the Act of June 9, 1939, and the Act of July 7, 1947, P. L. 558, 43 Pa. Stat. Ann. (Purdons), Sec. 2111.1 et seq., inter alia, provides as follows:

> "Sec. 6 (2)—It shall be an unfair labor practice for a labor organization, or any officer or officers of a labor organization, or any agent or agents of a labor organization, or any one acting in the interest of a labor organization, or for an employe or for employes acting in concert—
>
> "(a) To intimidate, restrain or coerce any employe for the purpose and with the intent of compelling such employe to join or refrain from joining any labor organization, or for the purpose or with the intent of influencing or affecting his selection of representatives for the purpose of collective bargaining."

The Pennsylvania Anti-Injunction Act of June 2, 1937, P. L. 1198, as amended by the Act of June 9, 1939, P. L. 163, 43 Pa. Stat. Ann. (Purdon's), sec. 206 et seq., inter alia, provides as follows:

> "Sec. 4—Provided, however, That this act shall not apply in any case—
>
> "(b) Where a majority of the employees have not joined a labor organization, or where two or more labor organizations are competing for membership of the employees, and any labor organization or any of its officers, agents, representatives, employees or members engages in a course of conduct intended or calculated to coerce an employer to compel or require his employees to prefer or become members of or otherwise join any labor organization.

"(c) Where any person, association, employee, labor organization or any employee, agent, representative or officer of a labor organization engages in a course of conduct intended or calculated to coerce an employer to commit a violation of the Pennsylvania Labor Relations Act of 1937 or the National Labor Relations Act of 1935."

COUNTER-STATEMENT OF THE CASE.

This was a combined equity action upon a single complaint for an injunction, instituted on December 3, 1953, by an employer, Sansom House Enterprises, Inc., one of the respondents (for the purposes of clarity hereinafter referred to as "employer") and 70 out of 90 employees, the remaining joint-respondents (for clarity hereinafter referred to as "respondent-employees") who joined in the said action by written joinder (R. 21a-24a).

The gravamen of both the employer's and the respondent-employees' actions was the charge that the petitioners, in violation of the laws of the Commonwealth of Pennsylvania, were picketing and otherwise unlawfully conducting themselves for the purposes of coercing the respondent-employees into involuntarily joining the petitioner-unions and to coerce the employer into compelling the said respondent-employees to involuntarily join the said unions and otherwise interfere with their rights and discriminate against them (R. 14a-15a).

On March 26, 1952 (R. 260), a large delegation, including the two individual petitioners and certain others with no obvious interest in the matter (R. 235a-236a), entered the employer's premises and without permission noisily and riotously invaded the kitchen (R. 191a-193a, 277a, 386a) where an altercation occurred between the petitioner—Ray Turchi, President and Business Manager of the petitioner

Waiters & Waitresses Union (R. 216a) and Jacob Blum, Secretary-Treasurer of the employer-corporation. Mr. Blum, resenting the unlicensed intrusion and the obstreperous deportment of Mr. Turchi, admonished him to behave himself and to discuss with counsel his, Mr. Turchi's, demand for reinstatement of one Mary Greenwood who had been discharged several weeks prior. When Mr. Turchi persisted in his demonstrative conduct, Mr. Blum advised him that unless he contained himself he would order him out, whereupon a "strike" was instantly signalled by the clamourous blowing of a whistle, Mr. Turchi irately shouting that he would picket the employer for ten or twenty years, if necessary, until he drove the employer out of business, even as the petitioners were then doing to the Anchorage (another local restaurant at which the petitioners had then been picketing for over four years)[1] (R. 264a), and that then Mr. Blum would learn to treat "Mister Turchi" respectfully, proclaiming that when he, Mr. Turchi, got through with Mr. Blum, the latter would gladly make those employees who were not members join the petitioner-unions (R. 190a-194a). This testimony was corroborated by Mr. Charles Haase, President of the employer-corporation (R. 104a-107a). Ignoring the invitation to treat with counsel concerning the issue of Mary Greenwood's discharge, the petitioners began picketing instantly, signs and placards having manifestly been prepared in advance (R. 107a).

Only thirteen out of approximately ninety employees heeded the strike call, the remainder continuing to work and all, except those who were absent at the execution of the Joinder, joined in this action (R. 105a-106a, 143a, 149a). The petitioner-unions neither at the time the cause arose or at any time since have represented a majority of the em-

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[1] Since enjoined on February 3, 1954 by Court of Common Pleas No. 2 of Philadelphia County, as of March Term, 1953, No. 5109, an appeal from the injunction in which is presently pending before the Pennsylvania Supreme Court, No. 113 of January Term, 1955: Anchorage, Inc. vs. Waiters & Waitresses Union, et al.

ployees involved (R. 217a), although picketing and the other complained activities were continuous and uninterrupted from March 26, 1952 until July 5, 1955, a week following the decision of the Pennsylvania Supreme Court for review of which the instant petition is brought.

Contrary to the assertions contained in the petitioners' Statement of the Case (pp. 5-6, Petition for Certiorari), the petitioners, under oath and at trial, asserted that the *only* three grounds for their continuing and incessant picketing were to protest (a) the "discriminatory" discharge of Mary Greenwood, (b) the employer's "interference" and (c) for "organizational" purposes (R. 222a, 237a, 262a).

As to the "discriminatory" discharge of Mary Greenwood, on review of the order of the Pennsylvania Labor Relations Board, Common Pleas Court No. 6 of Philadelphia County, in a decision rendered by the Honorable Gerald F. Flood, the Chancellor in the instant case, concluded that the said discharge was lawful and was not "discriminatory". The said decision was rendered on March 19, 1953 and subsequently affirmed on June 28, 1954 by the Pennsylvania Supreme Court in *Pennsylvania Labor Relations Board vs. Sansom House Enterprises, Inc.*, 378 Pa. 385. Meanwhile, on October 8, 1953, the employer, having previously and fully complied with the Order of the Pennsylvania Labor Relations Board in connection with the charge of "interference," filed the required proof of compliance with that Board (R. 125a; Exhibits P-5, P-6, R. 432a-443a). On October 13, 1952, *a year prior*, the employer, in writing, had offered each of the petitioning unions and Mary Greenwood to unconditionally reinstate the latter (Exhibits P-7, P-8, P-9, P-10, R. 443a-446a) to which Mrs. Greenwood (whose letter though addressed to her last known residence was undelivered but who, by the petitioner-Turchi's own admission, received from him his copy of the reinstatement offer (R. 251a-252a)) never responded (R. 142a) and with which offer the petitioners themselves cavilled and ignored in their reply of October 16, 1952

(Exhibit P-11, R. 447a). Neither did Mr. Turchi nor the other petitioners even discuss with Mrs. Greenwood the said offer of reinstatement (R. 256a-257a), nor advise any of the strikers to apply for reinstatement (R. 255a) even though unconditional reinstatement would have been accorded to any of the thirteen strikers applying therefor (R. 141a, 195a).

On October 8, 1953, the employer, by letter, notified all of the petitioners and their counsel of the aforesaid dismissal by Common Pleas Court No. 6 of the charge of "discriminatory discharge" of Mrs. Greenwood and of the employer's compliance with the aforesaid Order of the Pennsylvania Labor Relations Board and requested removal of the picket line (R. 127a-128a; Exhibits P-14, P-15, R. 452a-454a). There being no reply, a letter, dated October 19, 1953, was sent to the petitioners requesting that the petitioners present for consideration their grievances or demands (R. 127a-128a; Exhibits P-12, P-13, R. 449a-451a). These letters, too, were ignored and the picketing to *protest* Mrs. Greenwood's "discriminatory" discharge, her non-reinstatement and the asserted "interference" was continued, despite the petitioners' full knowledge of the aforesaid judicial decision that Mrs. Greenwood's discharge was lawful and *not* "discriminatory," the fact of the employer's compliance and in the very teeth of the written offers of reinstatement and negotiation of grievances and demands (R. 261a-262a, 255a-257a). Having no alternative, the employer and the respondent-employees instituted this action on December 3, 1953.

Continuously throughout the picketing the petitioners, by placards, literature and otherwise, have exhorted the public to boycott the employer (Exhibits P-1 to P-3, R. 413a-422a; R. 291a-293a, 304a, 355a) and have generally misconducted themselves (102a, 115a, 116a, 129a-131a, 291a-293a, 304a-305a, 311a-320a), often proclaiming that rotten or poisoned food was sold at the picketed establishment (R. 304a-305a, 392a-393a), and frequently endeavoring to

coerce the non-striking respondent-employees who refused to join the picket line by threatening them that they would lose their jobs when the petitioners "organized" the *employer's* business (R. 298a, 313a, 319a, 325a, 329a).

Opposite to the assertions in the petitioners' Statement of the Case (p. 6, Petition for Certiorari), the Chancellor did not render either Findings of Fact or Conclusions of Law on the issue of organizational picketing. The only Findings and Conclusions promulgated by the Chancellor are those scanty few reported on pages 459a and 471a. Indeed the Chancellor's failure to make these and other essential Findings and Conclusions not only compelled the respondents to take numerous exceptions to the Chancellor's Opinion (R. 475a-483a), but impelled the Supreme Court of Pennsylvania to comment on the lack of same as well as the incongruities between such of the findings which the Chancellor did render and portions of the "Discussion" segment of the Opinion (p. 23, Appendix, Petition for Certiorari). Such perfunctory observations as were made by the Chancellor in his "Discussion" concerning organizational picketing (R. 465a), did not comport with the admissions of petitioner-Turchi himself that the only visible sign or indication that the picketing was for "organizational" purposes was contained in the picket-placards which proclaimed a "Strike" and exhorted the public to boycott the *employer* (R. 242a-243a; Exhibit P-1, R. 413a and 455a).

In its Opinion the Pennsylvania Supreme Court, reversing the Chancellor, held that while under the law of the Commonwealth "picketing which is conducted SOLELY[2] in order to persuade non-union employees of an establishment to join the union is constitutionally protected and cannot be enjoined * * *," under the evidence of record and the petitioners' own admissions the picketing was clearly *not* for the *sole* purpose of inducing employees to join the petitioner-unions but for the illegal purpose of coercing

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[2] Emphasis supplied.

the employer to force employees involuntarily into the union, the court reciting at length and detail the facts and evidence in the record itself which led inevitably to that conclusion. Accordingly, consistent with the laws of the Commonwealth of Pennsylvania and the decisions of your Honorable Court, it ordered the entry of the remedial and long overdue relief.

REASONS FOR DENYING THE WRIT.

The most cogent reason for denying the Writ, it is respectfully submitted to your Honorable Court, is that no proper or adequate reasons obtain for the granting of the Writ. The decision of the Pennsylvania Supreme Court from which this petition is taken adjudicated a controversy which was completely local, involved neither federal nor constitutional questions and constituted an exercise of the Commonwealth's police powers in a dispute in which local law was violated, and wherein not only precepts of state law and the facts themselves, but good conscience, literally begged for relief. The propriety and finality of the decisions of the courts of last resort of the several states in labor disputes involving no federal or constitutional questions and which are in exercise of the local police power have so often been affirmed by your Honorable Court that, at this late date, it would be idle for the petitioners to dissent: *Giboney vs. Empire Storage & Ice Co.*, 336 U. S. 490; *Building Service Employees vs. Gazzam*, 339 U. S. 532; *International Brotherhood of Teamsters vs. Hanke*, 339 U. S. 470; *Hughes vs. Superior Court of State of California*, 339 U. S. 460; *Local Union No. 10, United Association of Journeymen Plumbers etc. vs. Graham*, 345 U. S. 192. If, indeed, no federal or constitutional questions here exist then, without more, the dismissal of the petition would be in order without further consideration, and the decision of

the Supreme Court of Pennsylvania be accorded the dignity to which by law it is entitled.

Although the petitioners continually take flight behind the boulder of "organizational picketing," the simple facts in the case demonstrate this taking of cover, so to speak, is not for the purpose of the protection of lawful rights but for ambushing law and justice and to waylay one's intelligence. A reading of the Record will disclose that "organizational picketing" is nowhere honestly concerned in this cause. It is recognized that at various points in the proceedings below the petitioners have intoned the liturgy of "organizational picketing," however the Record, the evidence therein contained, the physical exhibits, the petitioners' own admissions and, in truth, the findings of the Pennsylvania Supreme Court itself make it abundantly clear that the petitioners' chanticleering and their actions are two distinct commodities.

The respondents pleaded and presented evidence, sufficient to impel the Pennsylvania Supreme Court to reverse the Chancellor, to establish that, despite the petitioners' sanctimonious claims, the picketing and related misconduct was in reality nothing more than an implementation of the spiteful threats made by the petitioner-Turchi to picket the employer for ten or twenty years because of Mr. Blum's *lese majesté* in ordering him from the premises and that when the said petitioner "got through with him (Mr. Blum) he would learn how to respect 'Mister Turchi' " and his promise that when he was finished with Mr. Blum, the latter would be *glad* to make his employees join the union (R. 104a-106a, 191a-193a). The picketing was begun instantly and prosecuted relentlessly and without abatement from March 26, 1952 (R. 260) until July 5, 1955, shortly after the Supreme Court of Pennsylvania ordered its cessation.

The hearings before the Chancellor were held on January 25-26, 1954 and June 10, 1954 (R. 69a, 286a). Following the foregoing evidence of the respondents further and

considerable testimony was presented to establish mass-picketing, disorderly conduct, molestation of patrons and certain of the respondent-employees, interference with suppliers and deliveries, intrusions upon the employer's business premises, exhortations of public boycott, the use of opened umbrellas on sunny days to impede entrance to the employer's premises and kindred exhibitions of guile and malice (Opinion of the Pennsylvania Supreme Court pp. 23-24 Appendix, Exhibits P-1-P-3, R. 413a-422a, R. 291a-293a, R. 304a, 355a, Exhibits P-1-P-3, R. 102a, 115a, 116a, 129a, 131a, 242a-243a, 291a-293a, 298a, 304a-305a, 311a, 313a, 319a-320a, 325a, 329a, 413a-422a).

At these hearings the petitioners, making little or no denial of the foregoing demonstrations of muscle, asserted that the picketing and other activities were for the following three purposes: (a) to *protest* the "discriminatory" discharge of Mary Greenwood and her non-reinstatement; (b) to *protest* the employer's "interference" and (3) for "organizational" purposes. The petitioner-Turchi repeatedly maintained that these were the true and only objects of the petitioners' activities (R. 222a, 237a, 247a, 262a). However, it is important to note that at the time of these hearings and of Mr. Turchi's testimony, the employer had already and almost a year previous, on October 13, 1952, sent, by registered mail, unconditional offers to reinstate Mrs. Greenwood not only to Mrs. Greenwood but to each of the petitioners, who, every one, ignored the same (Exhibits P-7, P-8, P-9, P-10, R. 443a-446a, Exhibit P-11, R. 447a, R. 142a). Nor did the petitioners even deign to discuss the offer with Mrs. Greenwood (R. 256a-257a). No less important is the fact that even as he was testifying of his purpose of *protesting* Mary Greenwood's "discriminatory" discharge and admitted that the petitioners were still picketing for that "purpose," the petitioners knew full well that the said discharge had been judicially determined to be lawful and *not* "discriminatory" (R. 262a), that the employer had fully complied with the law in regard to the

protested "interference" (R. 127a-128a; Exhibits P-14, P-15, R. 452a-454a) and that the employer's invitation to submit grievances and demands had been received and ignored not only by him, the petitioner-Turchi, but by the other petitioners as well (R. 127a-128a; Exhibits P-12, P-13, R. 449a-451a).

It was in such premises that the Supreme Court of Pennsylvania concluded that the "cumulative" effect of the evidence was to clearly establish that the petitioners' activities were for the unlawful purpose of illegally coercing the employer to compel its employees to involuntarily join the union. (Opinion of the Pennsylvania Supreme Court, pp. 23-24, Appendix.) As here, the petitioners in the Court below argued that since no demand for a contract or the like was made upon the employer the conclusion of coercion upon the employer is completely inadmissible (pp. 11-12, Petition for Certiorari). However, the Pennsylvania Supreme Court, consistent with the law of the Commonwealth, as established in *Baderak vs. Building & Construction Trades Council*, 380 Pa. 483, held that if the facts otherwise prove an unlawful, coercive purpose, the demanding of recognition, a contract or the like is not essential:

> "Appellants (in the *Baderak* case) take the position that in order to show such primary or paramount purpose (of picketing), there must be in effect a specific demand upon the employer by the union for recognition, and picketing because of a refusal by the employer. It is true that, in such a case, the inference of unlawful purpose is readily made. However, even in the absence of a direct demand upon the employer by the union, the purpose of the picketing may, nevertheless, be just as clear."

Under the law of the Commonwealth of Pennsylvania, picketing or similar activities to coerce an employer to discriminate against his employees or to interfere with their rights under the law constitutes picketing or activi-

ties for an unlawful purpose: *Phillips vs. United Brotherhood of Carpenters,* 362 Pa. 78; *Wortex Mills, Inc. vs. Textile Workers Union,* 369 Pa. 359; *Baderak vs. Building & Construction Trades Council,* 380 Pa. 477; *Wilbank vs. Chester & Delaware Counties Bartenders, etc. Union,* 360 Pa. 48, certiorari from which was denied by your Honorable Court in 336 U. S. 945. Injunctive relief against such unlawfulness is admissible since the Pennsylvania Anti-Injunction Act, by its own provisions, is inapplicable to this manner of illegality: Act of June 2, 1937, P. L. 1198, as amended by the Act of June 9, 1939, P. L. 163, Section 4 (b) and (c), 43 Pa. Stat. Ann. (Purdon's), Sec. 206 et seq., (hereinbefore recited at length under the heading of "Statutes Involved"). The authority of a state to enforce its public policy and to prohibit such unlawfulness and to grant appropriate relief has, in almost identical circumstances, been affirmed by your Honorable Court as an inviolate right of a sovereign state in the exercise of its police powers: *Building Service Employees vs. Gazzam,* 339 U. S. 532.

So, too, the coercion of employees in the exercise of their rights under the Pennsylvania Labor Relations Act, by the express terms of that Act, constitutes unlawful conduct: Pennsylvania Labor Relations Act, of June 1, 1937, as amended by the Acts of June 9, 1939, P. L. 293 and July 7, 1947, Section 6 (2) (a), 43 Pa. Stat. Ann. (Purdon's), Sec. 2111.1 et seq. (hereinbefore presented verbatim under the heading of "Statutes Involved").

Thus, the propriety of the relief granted is plain. As to the justification in the Record for the granting of the relief, the Record itself is the best witness of the justice thereof. The Chancellor, as previously indicated herein and in the Opinion of the Pennsylvania Supreme Court, failed to make various essential and necessary findings of fact and conclusions of law. Even though generally, under the law of the Commonwealth, the appellate courts have the right to reverse factual findings or legal conclusions

wherever the court below is deemed to have acted arbitrarily or capriciously, in the instant case the Pennsylvania Supreme Court was thrice warranted in rendering the factual findings and inferences which it did: first, because the Chancellor failed to make the required findings, secondly, because the sparse findings which the Chancellor did render notoriously and patently conflicted with the established facts and, finally, because the petitioners themselves having *never categorically denied the purpose of unlawful coercion,* that issue was dependent on "inferences" deducible from the evidence; and, under the law of the Commonwealth of Pennsylvania, it has uniformly been held that such inferences or deductions from the testimony are properly reviewable by appellate courts: *Brooks vs. Conston,* 356 Pa. 69; *Crew vs. Gallagher,* 358 Pa. 541; *Heilig Bros. vs. Kohler,* 366 Pa. 72.

Thus, it is apparent that the Record and the inescapable deductions and inferences therefrom that such unlawfulness had been perpetrated as to render relief not only essential and proper but unconscionable to deny. In seeking to escape the remedial arm of the law the petitioners seek sanctuary in the terms "organizational picketing" and "free speech." Concerning the latter your Honorable Court has long concluded that picketing may not be equated with free speech and that unlawful picketing or picketing for unlawful purposes are not beyond the reach of the law under the cloak or guise of free speech: *Giboney vs. Empire Storage & Ice Co.,* 336 U. S. 490; *Building Service Employees vs. Gazzam,* 339 U. S. 532; *International Brotherhood of Teamsters vs. Hanke,* 339 U. S. 470; *Local Union No. 10, United Ass'n of Journeymen Plumbers etc. Union vs. Graham,* 345 U. S. 192, in which decisions your Honorable Court has held that violations of the public policy of a sovereign state constitutes such illegality as is comprehended by the terms "unlawful picketing" or "picketing for unlawful purposes."

There remains, then, the question of the claimed "organizational" picketing. To be sure, that term is not con-

stituted by law as a magic wand. The capricious application by labor factoti of the term "organizational" does not by some mysterious process place what might otherwise be unlawful activity beyond the reach of justice. It is respectfully submitted to your Honorable Court that the tenets of the law of picketing are not so departmentalized that one set of rules applies to "organizational picketing" and another but less licensing set of rules to other species of picketing. On the contrary, the law governing picketing is universal and in all circumstances requires that the picketing be lawful, for a proper purpose and objective and executed in a lawful manner. If from the facts themselves the picketing is conducted either in an unlawful manner or for an unlawful purpose or objective, then the picketing is illegal regardless of whether the union involved applies the term "organizational" to such illegal activities. All picketing, "organizational" or otherwise, finds its support and exemption in the constitutional provisions concerning free speech. Where the nature of the picketing is such that its constitutional privilege is forfeit, then the picketing is enjoinable whether it be "organizational" picketing or any other species. This very point was made quite clear in the Commonwealth in *Wortex Mills, Inc. vs. Textile Workers Union,* 369 Pa. 359 and *Wilbank vs. Chester & Delaware Counties Bartenders Union,* 360 Pa. 48, wherein the Supreme Court of Pennsylvania said:

> "* * * nor is such an organized effort to force the plaintiffs to violate the law excused by saying, as the appellant's brief does, that the picketing was done solely for organizational purposes * * *."

To have any significance at all the term "organizational picketing" must have substance and meaning. If it is merely a vacant phrase or one to be whimsically applied to any form of activity, then no legal cognizance may be taken thereof. On the other hand, if the term does have a special meaning and if a peculiar species of *privilege* does attach

to this singular form of picketing, then it would seem that it devolves upon the person claiming the particular privilege to establish that the complained activities fit the privileged pattern. To quote a pithy, if inelegant, maxim: "just saying so, don't make it so." If the complained activities appear to be illegal or of an innately "non-organizational" character, the designing or frivolous application of the term "organizational" does not work any legal alchemy or wondrously impart the craved legality to what is otherwise in law wholly illegal.

In *Blueboar Cafe vs. Hotel & Restaurant Employees Union*, ——(Ky.)—— 254 S. W. (2nd) 335, certiorari from which your Honorable Court denied in 346 U. S. 834, the facts involved were very similar to those in the instant case. There, as here, where an employee had been discharged, the picketing was claimed not only to be free-speech "grievance" or "protest" picketing but also to be privileged "organizational" picketing. The pickets carried "Do Not Patronize" placards. Even as the respondents in this cause, the plaintiff there contended that the picketing was not "organizational" at all but was designed to produce such loss to the plaintiff as would coerce it into compelling its employees to involuntarily join the picketing unions. The court, reviewing all of the then recent decisions of your Honorable Court bearing on the subject and tracing the social, economic and legal developments in the "picketing as free speech" issue held:

> "The union argues that even assuming a labor controversy does not exist between it and Blueboar, peaceful picketing is nevertheless allowable under the law of the state in order to disseminate information relative to the grievance it is claiming against Blueboar. If the picketing was concerned in isolation, we could early arrive at the conclusion that this assertion might have merit; but when we set it up against the factual background of this case, it forms a pattern which clearly shows that the union has employed methods, from the very beginning, which we think could have no other

effect than to coerce Blueboar to compel all of its employees to unionize."

Accordingly, the court, like unto the decision of the Pennsylvania Supreme Court in this case, rejected the contention that the picketing related to the dismissal of the employee who, as here, was held to have been legally dismissed. It found that the union activity was not a bona fide protest against allegedly discriminatory discharge nor was it intended to nor did it constitute "organizational" picketing because the facts disproved this contention and established that the true purpose was coercion of the employer.

In the Commonwealth of Pennsylvania, "organizational" picketing has been defined by the Supreme Court to be:

> "* * * picketing carried on *solely*[3] for organizational purposes, that is, to persuade non-union employees of an establishment to join the union * * *": *Pappas vs. Local Joint Board, et al.*, 374 Pa. 34.

It is self-evident that the picketing in this case does fall within the definition for not only does the Record abound with evidence that the purposes of the picketing were not "sole" but multiple and diverse, but the petitioners themselves repeatedly admitted the fact (R. 222a, 237a, 247a, 262a). As to the nature of the purpose, the decision of the Pennsylvania Supreme Court in this case clearly determines that issue in holding that the objective of the picketing was the unlawful coercion of the employer. Thus, the picketing here does not even fit into the pattern of "organizational" picketing as it is described by law in the Commonwealth of Pennsylvania.

Apparently, in an effort to escape from the reality that the law of the Commonwealth of Pennsylvania affords no

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[3] Emphasis supplied.

comfort to their claim of "organizational" picketing, the petitioners have urged and place great stress upon the *Virginia case of Painters & Paperhangers Local Union, 1018 vs. Rountree,* 194 Va. 148, 72 S. E. (2nd) 402 (p. 15, Petition for Certiorari), noting that the said case was "cited with approval by the Supreme Court of the United States in *Local Union No. 10, A. F. L. vs. Graham,* 345 U. S. 192." It is strange that the petitioners should cite the *Graham* case as support for its position since a diligent or careful reading of either the *Rountree* or the *Graham* case would disclose that the *Rountree* case was employed by your Honorable Court only by way of *negative* example and that actual holding by your Honorable Court in that case, parallel with the decision of the Pennsylvania Supreme Court in this case, was that relief was properly granted where the evidence established that the picketing, though peaceful, was for an unlawful purpose, your Honorable Court saying:

> "In the *Rountree* case * * * the highest court of Virginia holds that the Statute does not prohibit peaceful picketing 'unless * * * for an unlawful purpose.' It adds that a 'purpose to compel the complainants to discharge the non-union painters or to compel the painters to join the union as a condition of their continued employment' would be an unlawful purpose, but it fails to find the existence of such a purpose. On the other hand, in the instant case, the same court states that the injunctive decrees of the trial court 'are plainly right.' It thereby sustains the trial court's findings that 'the picketing complained of * * * was carried on by the defendants * * * for aims, purposes and objectives in conflict with the provisions of the Right To Work Laws of the State of Virginia * * *.' The *Rountree* case thus reflects an instance of picketing so conducted as not to be in violation of the Right To Work Statute, whereas the facts in the instant case reflect conduct that is in conflict with the provisions of the Statute. However innocent the picketing appeared while in

progress, the Virginia courts found that it was COMBINED[4] with conduct and circumstances occurring before and during the picketing that demonstrated a purpose on the part of the petitioners that was in conflict with the Right To Work Statute."

Substituting the Pennsylvania Labor Relations Act for the Virginia Right To Work Statute your Honorable Court has before it in this case merely another *Graham* case, and, accordingly there appears no valid reason for the grant of the Writ.

CONCLUSION.

It is respectfully submitted that in view of the absence of any constitutional or Federal questions the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

I. HERBERT ROTHENBERG,
Counsel for Respondents.

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[4] Emphasis supplied.